

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

Petition of SouthEast Telephone, Inc., for)	
Arbitration of Certain Terms and Conditions)	Case No.
Of the Proposed Agreement with Kentucky)	2003-00115
ALLTEL, Inc., Pursuant to the Communications)	
Act of 1934, as amended by the Telecommunications)	
Act of 1996)	

**SOUTHEAST TELEPHONE, INC.'S MOTION IN LIMINE AND
OBJECTION TO ALLTEL'S DATA REQUESTS AND
OBJECTION TO ALLTEL'S REQUEST FOR EXTENSION OF TIME**

Comes now SouthEast Telephone, Inc. ("SouthEast Telephone"), by and through counsel, and hereby petitions the Kentucky Public Service Commission ("Commission") pursuant to 807 K.A.R. 5:001 to exclude any testimony, documentation or other evidence in this proceeding concerning the FCC's Triennial Review Order ("TRO")¹ and/or this Commission's Case Number 2003-00379, the so-called "nine month proceeding."²

BACKGROUND

At the informal conference held in this case on October 15, 2003, representatives of ALLTEL informed the Commission Staff and SouthEast Telephone that it would be conducting a market impairment analysis in this case pursuant to the FCC's Triennial Review Order. Counsel for SouthEast Telephone objected to any such evidence being presented in this

¹ Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Report and Order and Order on Remand, CC Docket No. 01-00338, Rel. August 21, 2003.

² In the Matter of: Review of Federal Communications Commission's Triennial Review Order Regarding Unbundling Requirements for Individual Network Elements, Case No. 2003-00379.

proceeding as irrelevant to the issues presented by a Petition for Arbitration of the terms of an interconnection agreement.

A representative of ALLTEL, Stephen B. Rowell, informed SouthEast Telephone's counsel that he simply intended to take the data requests propounded by BellSouth Telecommunications, Inc. ("BellSouth"), in this Commission's Nine Month Proceeding, Case Number 2003-00379, copy them, and propound them on SouthEast Telephone in the present case.

On October 24, 2003, SouthEast Telephone received a large number of data requests from ALLTEL marked as interrogatories and requests for production of documents. Upon inspection of these data requests, it is obvious that ALLTEL did, in fact, simply copy the data requests propounded by BellSouth in PSC Case Number 2003-00379.

MOTION IN LIMINE AND GENERAL OBJECTION

SouthEast Telephone objects to all of the interrogatories and requests for production of documents propounded by ALLTEL in this case as irrelevant to the issues before the Commission. SouthEast Telephone further objects to any testimony, exhibits or other evidence designed to support ALLTEL's misplaced argument that the issues presented by the FCC's Triennial Review Order are to be litigated in every Interconnection Agreement Arbitration. Finally, SouthEast Telephone moves this Commission to enter an Order precluding such evidence from being presented in this case by any party.

PRESUMPTION OF IMPAIRMENT

As this Commission is aware, the FCC has determined that there is a presumption of impairment for competing carriers in the mass market. "We find on a national basis, that competing carriers are impaired without access to unbundled local circuit switching for mass

market customers.”³ That presumption may be rebutted by the incumbent local exchange carrier (“ILEC”), within the context of the nine month proceedings mandated by the FCC, not in every petition for arbitration of the terms of an interconnection agreement.

Aside from the inappropriateness of ALLTEL’s position on this issue, it would be impossible to conduct a market impairment analysis in the present case without data from the ILECs and CLECs throughout ALLTEL’s region. The FCC has set forth a number of triggers based on data gathered in specific markets for the State Commissions to use in determining whether impairment exists in a specific market. That data cannot be gathered from companies that are not a party to this proceeding. It has not yet been gathered in the Commission’s nine month proceeding. The analysis that ALLTEL seeks to present to the Commission would thus necessarily contain incomplete data, resulting in a useless analysis. SouthEast Telephone obviously disagrees with ALLTEL’s stated position that each individual CLEC comprises its own market for the purposes of impairment analysis in the mass markets.

OBJECTION TO EXTENSION OF TIME

The Commission's scheduling Order of October 27, 2003, requires parties to file testimony in this matter by November 5, 2003. The issues in this matter are not complex. SouthEast Telephone stands ready and able to file its testimony within the time frame provided by the Commission, and expects ALLTEL to adhere to the Commission’s scheduling Order.

As stated by ALLTEL in its motion for extension of time, “[t]he parties' prefiled testimony is essential to the presentation and development of the issues in this matter.” The parties, the Commission and the Commission Staff will need the time allotted between November 5, 2003, and November 13, 2003, the formal hearing date, to prepare cross-

³ Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Report and Order and Order on Remand, Id.

examination and rebuttal testimony. ALLTEL has presented no good reason why it should be permitted to deviate from the deadline set forth by the Commission.

CONCLUSION

SouthEast Telephone has been attempting to enter into an interconnection agreement with ALLTEL for over a year. ALLTEL has continually delayed this matter through its initial refusal to communicate with SouthEast Telephone and its refusal to negotiate any terms of the interconnection agreement until a Petition was filed with this Commission. ALLTEL now seeks to delay this matter further with motions for extensions and threats of litigation against the Commission. SouthEast telephone simply requests that this Commission order ALLTEL to comply with its Orders as well as those of the FCC, and proceed with arbitration of the terms of the interconnection agreement.

Respectfully submitted,

SOUTHEAST TELEPHONE, INC.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed on this the 31st day of October, 2003, to:

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